

26 OCT 1978

MEMORANDUM FOR:

[REDACTED]
Special Assistant to the Director

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FROM:

Robert W. Gambino
Director of Security

SUBJECT:

Vogt Proposal

1. This memorandum is for your information. It sets forth some of the issues raised during discussions at the working level on General Vogt's proposals.

2. In connection with ongoing efforts to implement the new Executive Order on the Security Classification System (EO 12065) which is effective 1 December 1978, issues have arisen related to compartmentation. Among these are:

a. The E.O. sets new rules for classification and compartmentation which call for modification of our compartmentation procedures such as paragraph markings, duration of classification, etc. Most importantly and almost essential is the view that the E.O. requires exhaustion of the protective features of each level of classification before a higher level can be used. This hierarchical view of classification calls for the acceptance that material can be placed at the SECRET level when it meets the E.O. test for SECRET classification and a conscious decision that the protective features of CONFIDENTIAL are inadequate. TOP SECRET could be used only when the material meets the E.O. definition - exceptionally grave damage to the national security and when protection offered by SECRET classification are not sufficient. In this view, compartmentation could only be used when something extra is needed to protect the material, something that TOP SECRET alone would not provide. Logically therefore, only TOP SECRET material could be considered for compartmentation. At the present time, regulations permit compartmentation of unclassified material and material at all levels of classification. The converse view is that compartmentation is a control vehicle, not an extra layer of clearance. Compartmentation is resorted to when "normal management and safeguarding procedures are not sufficient

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to limit need-to-know or access" (4-202 (a)). This represents invocation of institutional versus individual need-to-know.

Further, the E.O. makes no allowances for treating compartmented TOP SECRET differently than collateral TOP SECRET. TOP SECRET is TOP SECRET and all controls required for it by the E.O. must be applied when the material is compartmented. As you know, current compartmentation practices result in treating compartmented TOP SECRET less stringently than collateral TOP SECRET. A hard look at accountability controls will have to be taken to assure changes to reach consonance with current collateral procedures.

Still further, the E.O. addresses in some detail the so called "Special Access Controls" which we call compartmentation. In a "fact sheet" released to the press at the signing of the E.O., comments are made that there are hundreds of "special access" programs "which restrict access to highly sensitive classified," and says these programs are "expensive to maintain and may prevent or delay access by policy officials who really need the information. In addition, the proliferation of these programs has reduced their protective value." While one may debate whether they are providing proper protection, it is clear that the intent of the E.O. is for less compartments, not more.

b. The fact sheet goes on to say that "the new Order allows agencies to continue such programs - they are needed in special cases - but it reduces their number. Henceforth, these programs may be continued or created only upon a written finding of necessity by an agency head. A "sunset" provision will terminate each program, unless established by treaty or international agreement, after five years unless a new determination of need is made".

c. In the E.O. itself, the DCI is identified as the only authority to create or continue such programs for matters pertaining to intelligence sources and methods. The Order also stipulates that classified information in such programs shall be declassified in accordance with the Order.

d. The clear implication is that there will be a reduction in the number of compartmentation systems. Concern has been raised that Vogt's proposals not only allow existing compartments to continue, but permits other compartments in the collection side and establishes 7 new ones in the publication side. The thought occurs that COMINT collection programs will now become new compartments.

e. There is some concern expressed with the implication that many more people will be allowed access to compartmented materials under the Vogt proposals. This is viewed as being contrary to the E.O. requirements that the number of persons who will need access will be reasonably small. At the same time, if only source revealing material is included in compartmented product, the numbers can be kept small with rigid discipline. At any rate, prior to initiating any new system, it seems that a zero-based review of clearances is demanded to ensure that the proposed new system gets off on the right foot in the special tight control over compartmented access.

f. The possibility of an expanded population is viewed with some concern also by those responsible for investigative resources. At the present time, there is considerable commotion within the Defense Investigative Service because of the large numbers of people who are submitted for special access approvals since all of them have to be investigated against a tough criteria set out by a DCID (DCID 1/14 - Uniform Personnel Security Criteria for Access to Special Compartmented Intelligence). There is no way that current investigative resources in the community could handle a multifold increase in the number of investigations that appears possible under General Vogt's proposal.

g. In connection with the proposal to compartment HUMINT, I think there is considerable agreement in the community which can be characterized by a statement made by General Brown, USAF, on 10 September 1978 in response to the DCI's question - "Is there need for more formalized compartmentation in the HUMINT field?"

General Brown's comment was:

"The current method of operation within the HUMINT field is flexible, responsive and secure. I do not believe that formalizing a good and workable system would add to its utility or security. Recommend that HUMINT remain outside of the current formalized SCI systems."

Of course, these comments were made before General Vogt's proposals were conceived and might not hold true today. However, there has been some general feeling that HUMINT, except in very special cases, stay outside compartmentation. Maybe some accommodation could be reached by considering compartmentation of value only when HUMINT meets General Vogt's criteria of "Ultra-Sensitive" material, also elimination of the ORCON designation may tempt HUMINT collectors to want to use a HUMINT compartment needlessly. There must also be some attention focused on the whole question of why we now want to compartment broad categories of material that never have been afforded such protection before, i.e., diplomatic, IR, lasers, elint, etc.

3. In connection with replacement of the present system with a new system - new words, etc., there is almost complete agreement that old material could not be changed over to meet new requirements. Such actions would be almost a prohibitively high administrative and technically impossible task.

4. Those, then, are some of the problems. We don't have many answers, but the following suggestions may be slightly less than dross in a strawman paper which brings these concerns to your group for recommended courses of action.

5. Re compliance with E.O. 12065 in structuring a new Compartmentation Program.

a. Classification

The question whether or not compartmented information must be classified should be addressed. It would appear that the E.O. requires that only material classified pursuant to the Order can be compartmented. (See Section 4-201).

The question whether or not material classified less than TOP SECRET can be compartmented should be addressed. It would appear that there are permissible interpretations of the E.O. to:

(1). Support the contention that collateral classifications must be exhausted before moving to compartmentation "of particularly sensitive information"...with the objective of providing extra protection for the information involved.. (Section 4-202 (b));

(2). Support the contention that any level of classified material can be compartmented since the E.O does not specifically designate any given level of classified material for compartmentation and that compartmentation takes over when normal management and safeguarding procedures are not sufficient to limit need-to-know or access (Section 4-202 (a)).

b. Classification of Sections

The question whether or not compartmented material should be classified section by section should be addressed. Currently, no compartmented material is classified section by section - or if so, it is on an optional basis. The E.O. requirement is specific but does allow waiver. The Director of the Information Security Oversight Office may, for good cause, grant waivers of the requirement for specified classes of documents or information. It would be incumbent upon the DCI to make a case to The Director of the Information Security Oversight Office to waive the requirement for section marking of Compartmented Intelligence.

c. The question whether or not TOP SECRET compartmented materials must be accorded all control procedures required in the E.O. for collateral TOP SECRET must be addressed. It would appear that current practices of treating compartmented TOP SECRET less stringently than collateral TOP SECRET cannot be supported by any tenet of the new Order. This position implies that compartmented controls can in effect not be any less than the

controls for TOP SECRET collateral material or that regular classification controls be duplicated in the compartmented systems. The E.O. addresses only a requirement to maintain records of reproduced TOP SECRET documents. Its Implementing Directive places requirements for annual inventory of TOP SECRET material. Waiver of the requirement can again be made only by the Director of the Information Security Oversight Office based upon a request for cause by the DCI. My personal opinion is that we should strive to comply as much as possible with requirements of the E.O. So, I hold for paragraph by paragraph classification of compartmented reports. There should be no attempt, of course, to classify various sections of tapes of intercepts or photography, either film or prints.

d. Further, if we decide that all levels of classified material can be compartmented, we must address the need for classification guides which are called for in the E.O. These guides would help in the classification of material as compartmented information is prepared and serve to direct derivative classification. The guides have to show how the designations, time limits, markings and other requirements of the E.O. are to be applied.

e. Since there will be many people who will be working with compartmented raw intelligence who do not have original classification authority, some means must be provided for them to classify compartmented finished intelligence. Now we use the device TK-1 and BYE-1 to show classification authority. Would there be a [redacted] under Vogt's proposal? If this is 25X1 viewed as a viable approach, then separate classification guides would have to be prepared for each compartmented program.

f. In the area of declassification, the E.O. requires automatic declassification no more than six years from date of original classification unless the DCI or his designee says the material can be classified longer, but at any rate, not longer than 20 years. At that time, it must be reviewed and the classification can be extended for another 10 years when it must be reviewed again for declassification. While it seems

that material classified under the Vogt proposal could be classified for 20 years, this requires a written showing by the DCI. A determination will have to be made whether compartmented information will be treated as a class of material and automatically classified for 20 years or whether each bit of compartmented material will be given a declassification date on its own merits.

6. Other specific comments on the Vogt paper include:

a. In paragraph 8, under the definition of compartmented materials, the last three words of the definition "provided by compartmentation" should be deleted.

b. When one places materials in one of the seven generic categories, when the source is stripped, there must be a question of whether we are still talking about compartmentation as it should be in view of his paragraph 8 definition or whether we are merely establishing seven categories for the placement of information irrespective of need for normal or special protection.

c. The "ULTRA-SENSITIVE" designator suggests that this should have highly restrictive handling. However, there has already been a suggestion that all material currently caveated GAMMA would be handled ULTRA SENSITIVE. One can also envision that all BYEMAN programs would consider themselves ULTRA-SENSITIVE under the concern of jeopardy to a vital collection program. Perhaps GAMMA alone could be that COMINT which goes into [] as a realistic solution. Otherwise, we may be on the road to cheapening a system before it ever gets off the ground. Complete parameters for the usage of this holddown will have to be developed to be workable.

d. The Vogt paper addresses fast forwarding of ELINT, COMINT and IMAGERY to field commanders, to include NATO or combined headquarters. This proposal bears considerable study to ensure that the desire to assist field commanders is not done to the detriment of truly sensitive sources and methods.

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